

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the T Campbell
Development LLC

**FINDINGS OF FACT,
CONCLUSIONS
AND RECOMMENDATION**

This matter came on for a hearing before Administrative Law Judge Manuel J. Cervantes on Wednesday, February 4, 2009, at the St. Paul offices of the Office of Administrative Hearings

Michael J Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, appeared on behalf of the Minnesota Department of Commerce (Department). There was no appearance by or on behalf of T Campbell Development LLC (Respondent). The hearing record closed on February 4, 2009.

STATEMENT OF THE ISSUES

1. Whether the Respondent has performed in breach of contract in violation of Minn. Stat. § 326.91, subd. 1(4) (2006)?
2. Whether the Respondent has demonstrated financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1(6) (2006)?
3. Whether the Respondent has violated Minn. Stat. § 45.027, subds. 1 and 1a (2006)?

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On November 13, 2008, a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges in this matter was served upon Respondent at its last known addresses. The Notice of and Order for Hearing indicated that a prehearing conference would be held in this matter on February 4, 2009.

2 The Notice and Order for Hearing in this matter includes the following statements:

Respondent's failure to appear at the prehearing conference or hearing may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

...

Pursuant to Minn. Stat. § 45.027, subd. 6 (2008), Respondent may be subject to a civil penalty not to exceed \$10,000 per violation upon a final determination that Respondent violated any law, rule or order.

3. There was no appearance by, or on behalf of, Respondent T. Campbell Development LLC at the February 4, 2009 prehearing. No prehearing request was made for a continuance, nor was any communication received by the undersigned from T Campbell Development LLC.

4. The Statement of Charges alleges that:

- A. The Respondent was formerly licensed as a residential building contractor by the Department, License No. 20628140. The license expired effective March 31, 2008.
- B. The Department received a complaint from Haro Electric Solutions, Inc. Haro Electric contracted with Respondent to provide services for a residential home remodeling project in Minneapolis and to date has performed a total of \$9,150 of work which has not been reimbursed by the Respondent. Respondent issued Haro Electric a check for \$4,300 which was returned for insufficient funds.
- C. Centraire Heating & Air Conditioning, Inc. contracted with Respondent to provide services for the same home in Minneapolis that Haro Electric had worked on. Despite completing the contracted-for work, the Respondent has failed to reimburse the remaining \$3,855.25 to Centraire.
- D. Geri Williams, a Minneapolis homeowner, contracted with Respondent to remodel her home. Respondent was paid a \$5,000 down payment for the project. To date, no work has been commenced on the project and no refund has been made.
- E. Respondent has failed to respond to the Department's investigation of the above complaints.

5. The allegations contained in the Statement of Charges are deemed proven and are incorporated into these Findings by reference.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 45.027, 82B.03 and 82B.20 (2008).

2. Respondent received notice of the charges against him and of the time and place of the evidentiary hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. Respondent is in default as a result of his failure, without the Administrative Law Judge's prior consent, to appear at the scheduled prehearing conference.

4. Pursuant to Minn. R. 1400 6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations and claims set forth in the original Statement of Charges may be taken as true or deemed proved without further evidence.

5. Based upon the facts set forth in the Statement of Charges, Respondent has demonstrated financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1(6) (2006).

6. Based upon the facts set forth in the Statement of Charges, Respondent has performed in breach of contract in connection in violation of Minn. Stat. § 326.91, subd. 1(4) (2006).

7. Based upon the facts set forth in the Statement of Charges, by failing to respond to the Department's investigation, the Respondent violated Minn. Stat. § 45.027, subds. 1 and 1a (2006).

8. The imposition of disciplinary sanctions against Respondent is in the public interest.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that appropriate disciplinary action be taken against the residential building contractor's license of T. Campbell Developments, LLC. The undersigned recommends that discipline be imposed upon Counts I, II, and III of the Statement of Charges.

Dated: February 12, 2009

s/Manuel J. Cervantes

MANUEL J. CERVANTES
Administrative Law Judge

Reported: Digitally Recorded. No transcript prepared.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, General Counsel, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, Minnesota 55155 or call the Department at (651) 284-5492 to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.